

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 434 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MADHAV PROTEINS PVT.LTD.

Versus

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

Appearance:

1. Appeal from Order No. 434 of 1997
MR AK CLERK for Petitioner No. 1
M/S RJ RAWAL ASSOC. for Respondent No. 1
MR SB VAKIL for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 16/10/2001

ORAL JUDGEMENT

The present appellant-original plaintiff has

challenged in this appeal the impugned order dated 2.8.1997 passed by learned Civil Judge (S.D.), Gondal dismissing application Ex.5 in Special Civil Suit No.39/95. On 28.8.1997 learned Single Judge of this court while issuing notice to the other side continued ad-interim relief in favour of the appellant-plaintiff, which was ex-parte granted by the trial court in its favour. The appellant-plaintiff filed Special Civil Suit No.39/95 against the respondent-defendant for specific performance and damages for allotment of plot admeasuring about 5000 sq. mtrs. in Rajkot. The case of the appellant is that it has deposited, in all, Rs.64,000/= with the respondent-defendant which was forfeited by them and though the appellant-plaintiff was always ready and willing to pay the amount and in fact he had paid the amount as offered by the respondent. The case of the defendant was that the amount was not paid in stipulated time, therefore, they were entitled to forfeit the amount.

The learned Judge held that there was no contract prevailing between the parties. According to the learned Judge if the defendant rescinded the contract illegally, then plaintiff is entitled to get the demands from the defendant, which is a corporate body which has suffered a great loss because of the ex-parte interim order prevailing in favour of the plaintiff for last two years. Thus, learned Judge found that the balance of convenience was also not in favour of plaintiff, hence application Ex.5 was dismissed and the ad-interim relief granted earlier was vacated.

However, as stated earlier, while entertaining this appeal, this court continued the interim relief granted earlier by the trial court in favour of the plaintiff which is in force till today.

The impugned suit is of 1995, therefore, both the learned counsel for the parties requested the court to direct the trial court to decide Special Civil Suit No.39/95 as earlier as possible. There cannot be any difficulty in showing such direction on facts of this case. However, learned counsel Shri Clerk for the appellant submitted that till the suit is decided the interim order granted earlier by this court while entertaining this appeal may continue. On facts of this case it could not have been objected by learned counsel Mr.Raval but he submitted that while continuing the said interim relief, the appellant-plaintiff should be put on terms because the respondent-Corporation is a public body, which is suffering great loss because of the

interim order passed by the court. However, he left it to the discretion of the court to fix the reasonable amount to be deposited by the appellant-plaintiff before the trial court. Similarly, Mr.Clerk has also left to the discretion of the court.

In view of the above, this appeal is disposed of without going into the legality and validity of the impugned order passed by the learned Trial Judge with a direction to the learned Trial Judge to decide Special Civil Suit 39/95 as early as possible and not later than 31.12.2002. Till then, the interim relief granted earlier by this court on 28.8.1997, which is continued so far shall continue subject to the condition that the appellant-plaintiff shall deposit Rs.5,00,000/= in addition to the amount which has been paid by it to the respondent-defendant before the trial court within eight weeks from today. On depositing the said amount, the respondent-Corporation shall be permitted to withdraw the said amount by furnishing proper security to the satisfaction of the trial court. It is made clear that in case the appellant-plaintiff succeeds in the suit then, it will get back the amount with interest on it which may be fixed by trial court at the time of passing decree. Accordingly, this appeal is disposed of.

(B.J.Shethna, J.)

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